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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/360,422	07/23/1999	JAY S. WALKER	99-004	4171
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EXAMINER				
ZURITA, JAMES H				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/360,422

Applicant(s)

WALKER ET AL.

Examiner

JAMES ZURITA

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 12-43, 47-59, 61-72, 74-79, 82-104 and 108-126 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12-43, 47-59, 61-72, 74-79, 82-104, and 108-126 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

On 31 October 2007, applicant petitioned to revive the abandoned application.

On 26 June 2008, the Office granted applicant's petition to revive.

On 31 October 2007, applicant amended claims 1, 2, 13, 15, 16, 17, 19, 22, 28, 30, 33, 35, 47, 48, 74, 108.

On 08/11/2008, the Examiner rejected claims 1-7, 12-43, 47-59, 61-72, 74-79, 82-104, and 108-126.

Response to Amendment

Applicant's submission of 12/11/2008 has been entered.

Applicant amended Claims 1, 2, 13, 15, 17, 19, 22, 28, 30, 33, 35, 47, 48, 74, 108, 119 and 123-126.

Claims 8-11, 44-46, 60, 73, 80-81, 105-107 have been cancelled during prosecution.

Claims 1-7, 12-43, 47-59, 61-72, 74-79, 82-104, and 108-126 are pending.

Claims 1, 2, 13, 15, 16, 17, 19, 22, 28, 30, 33, 35, 47, 48, 74, and 123-126 (a total of 20 claims) are independent.

Claim Objections

The following claims contain informalities:

Claim 90 reads "...wherein the processor **if** further operable to..."

Appropriate correction is required.

Response to Arguments

Applicant's arguments of 12/11/2008 have been carefully considered but are not persuasive.

Applicant argues, page 31, as to priority:

The Examiner is correct that inventor Magdalena Fincham does not appear in other parent applications, but Applicants respectfully note that inventor Jay Walker does appear as an inventor on the parent applications (except for U.S. Application no. 09/947,798), and that all of the parent cases are owned by virtue of assignment by the same entity as the present application. Accordingly, Applicants respectfully submit that the present application should be accorded the requisite priority date(s) for features that appear in the pending claims that have been disclosed in those parent cases.

Respectfully, materials introduced in the instant application are granted a priority of 23 July 1999. For example, profit margins (claims 12, 13, 20, 23, 61, 82, 86) are not mentioned in any of the long chain of applications upon which applicant relies.

Applicant argues, pages 31-34, as to lack of written description, first paragraph

Claims 1, 2, 13, 15, 17, 19, 22, 28, 30, 33, 35, 47, 48, 74 and 108 are directed to "...secondary product does not have a **pre-established** relationship with the primary product..." Claims 16, 17 and 84 refer to "...at least one secondary product having a **predetermined relationship** with the at least previously sold product that does not include the primary product..."

Claims 29, 30, 33-35, 93 and 96 refer to "...package offer comprises an offer for sale of a **pre-determined** number of the secondary products selected by the customer from each of the plurality of lists, at the package price..."

It is not clear whether applicant claims patentable distinction by his use of the hyphen, e.g., pre-determined v. predetermined and pre-established v. pre established. Applicant does not provide description of a patentable distinction. Applicant's latest comments add to the confusion, since products are selected for inclusion in the package based on profit margin considerations and does not describe how profit margins have nothing to do with the relationship of the primary and secondary products in a package.

Further, the specifications refer to pre-determined relationship/package. There is no mention of a product that ...does not have a pre-established relationship... Claims 3, 50, 75 refer to "...viewed by the customer for a pre-determined amount of time..."

Applicant argues, pages 33-34, as to 35 USC 112, first paragraph rejection.

With respect to claims 1, 47, 74, 83, 119-124, and 125-126, Applicants respectfully reassert that reasonably particular language has been used to describe features by which a customer's interest may be indicated, detected, or interpreted. In addition, various examples of how interest in a product may be determined, interpreted, detected, relied upon, or indicated, based on various types of available information are provided by the present application. For example, detecting that a primary product is of interest to the customer may involve detecting that information is displayed on a web-page being viewed by the customer, or detecting an input signal generated by the customer, or detecting that the customer has added the primary product to a virtual shopping cart (see page 6, lines 12-22). Other descriptions of customer interest can be found, for example, on page 15, lines 3-16, and on page 20, line 25 to page 21, line 13. Accordingly, we respectfully submit that one skilled in the art, upon reading the present disclosure, would readily understand the language used in the pending claims that refer to detecting and indication a customer's interest in a product.

Again, examples are not definitions:

...That a person skilled in the art might realize from reading the disclosure that such a particular definition (as now argued) is a possible definition is not a sufficient indication to that person that that particular definition is part of Applicant's invention as originally filed. Claims yet unpatented are to be given the broadest reasonable interpretation consistent with the specification during the examination of a patent application. In re Prater, 415 F.2d 1393, 162 USPQ 541 (CCPA 1969).

In the instant case, Applicant has not persuasively demonstrated that the Examiner has applied an unreasonable interpretation of the recited feature, that the interpretation is inconsistent with the specification, or that applied interpretation is **repugnant** to one of ordinary skill in the art.

Applicant argues, Page 34, as to indefiniteness, second paragraph

...Applicants admit that some embodiments described in the present specification show secondary products that are in a pre-established relationship with a primary product, but we respectfully point out that those embodiments are not at issue here. That is, the pending claims are directed to other disclosed embodiments. The present application discloses embodiments wherein a package is assembled on an ad hoc basis (see page 26, lines 25-26), and further wherein the secondary product is selected for inclusion in the package based on, for example, profit margin considerations that have nothing to do with the relationship of the primary and secondary products (see application, page 33, lines 12-30).

Respectfully, examples are not definitions. Applicant admits that the primary and secondary products are related by profit margin considerations. "...Have nothing to do with the relationship of the primary and secondary products..." is not in the claims.

...Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings."). Any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also MPEP § 2111.01.

During prosecution, claims are given their broadest reasonable interpretation:

USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In *re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). In *re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550- 551 (CCPA 1969). See also In *re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of

language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. MPEP 2106.

Applicant argues, pages 35-41, against the rejections over prior art.

At the onset, the Examiner notes numerous errors. Applicant's assistance is requested to expedite prosecution. Some examples follow. Please review for others.

On page 35, applicant states:

As explained above, independent claims 1, 2, 15, 19, 22, 28, 30, 47, 48, 74, and 108 have been amended herein. Each of these claims now generally recites:
...the central server dynamically determining a package on an ad hoc basis to be offered to the customer...

Claims 47, 48 and 108 do not recite the limitation "...on an ad hoc basis..."

Applicant states, page 35, last paragraph,

In stark contrast, pending independent claims 1, 2, 15, 19, 22, 28, 30, 47, 48, 74, and 108 have been amended herein to recite that at least one secondary product is selected for inclusion in the package based on past interest by the customer in at least one secondary product.

Respectfully, 13, 17, 33 and 35 were similarly amended.

On page 36, applicant states

Furthermore, claims 1, 2, 15, 19, 22, 28, 30 and 74 generally require

...in response to detecting that the primary product is" of interest to the customer, dynamically determining a package on an ad hoc basis to be offered to the customer, the package comprising the primary product and at least one secondary product, the primary product and the at least one secondary product each having a corresponding retail price...

Respectfully, the limitation also appears in at least claims 13, 17, 33, 35, 119.

On page 38, applicant refers to claims 54-56, 69-72, 114 and 118, then requests withdrawal of 103(a) rejections of claims 54-56, 69-72, 114 and 108.

On pages 39-40, applicant purports to identify six reasons for traversing the rejections under Blinn and Bernard, but fails to identify a fifth reason.

Applicant's arguments concerning rejection under 35 USC 102(e) are moot in view of new grounds of rejection.

Applicant argues, item 1.01, pages 36-37, 35 USC 103(a) rejections over Blinn

...independent computer readable medium claims 13, 17 and 33 each have been amended, and each one includes:
in response to detecting that the primary product is of interest to the customer, [new limitation] dynamically determining a package on an ad hoc basis to be offered to the customer, the package comprising the primary product and at least one secondary product, the primary product and the at least one secondary product each having a corresponding retail price...

[new limitation] selected for inclusion in the package based on an indication of **past interest**, by the customer, in at least one secondary product, and further... (Emphasis added)

... at least one of the at least one secondary product is selected for inclusion in the package based on an indication of a **past interest** by the customer, which is not taught or suggested by Blinn...

In Blinn, a customer indicates his past interest in an at least one secondary product by virtue of being a member in a frequent shopper program, or part of an incentive program, for example, as in Blinn, Col. 1, lines 43-56. Rejection is maintained. New limitations are addressed in the new grounds of rejection.

Applicant's arguments concerning rejection under 35 USC 102(e) are moot in view of new grounds of rejection.

Applicant argues, item 1.02, pages 37-38, concerning Blinn and Gupta:

Applicants respectfully submit that Gupta does not cure the deficiencies of Blinn explained above. In particular, Gupta does not suggest or teach the feature of...as required by independent claims 1 and 35. Accordingly, claims 1 and 35 are patentably distinct thereover. In addition, dependent claims 16 and 34 should be allowable for at least the same reasons.

Furthermore, contrary to the Examiner's assertion, nothing in the cited portion or otherwise in Blinn teaches or suggests "storing in a database information relating to a previous transaction of a customer, the previous transaction including at least one previous sold product" (see Office Action, page 35). In particular, the cited portion of Blinn (col. 21, lines 6-34) describes a portion of Fig. 15a and Fig. 15b, which shows pseudo code for an action, and order and an annotated order (Fig. 15a), and pseudo code for a template portion, an order, an access object and a page portion (Fig. 15b), wherein both

of these figures together illustrate the data flow of Fig. 14. The disclosed process merely keeps track of the customer's ongoing order, and there is no teaching or suggestion that the order data is saved for any future use after the transaction is completed....

In response, please see references 520 (revised order), 544 (annotated order), 606 (modified order) and 610 (object to access modified order) and related text. The data is saved and used to show modifications to orders. Rejection is maintained.

Applicant argues, item 1.03, page 38, concerning Blinn and Tice:

...Although Tice describes having customers order products over the internet directly from manufacturers, and to have them shipped either to the store or the customer's home (see paragraph spanning page 2 to page 3), it does not cure the deficiencies of Blinn discussed above.

In particular, neither Blinn nor Tice, either alone or in combination, teaches or suggests the features of:

wherein at least one of the at least one secondary product is

"selected for inclusion in the package based on an indication of ***past interest***, by the customer, in at least one secondary product, and further.. (Emphasis added)

In response, Blinn, a customer indicates his past interest in an at least one secondary product by virtue of being a member in a frequent shopper program, or part of an incentive program, for example, as in Blinn, Col. 1, lines 43-56. Rejection is maintained.

Applicant admits, Item 1.04, pages 39-41

...Bernard...suggested, to one of ordinary skill, identifying [tracking] a selection that is "on hold," and somehow prompting a caller to either place the selection back into a virtual shopping cart or to delete the selection...there is a suggestion of a list of items "on hold"... [in Bernard] a caller is given a choice only between deleting an item from an "on hold" list or putting it back in a shopping cart.

Applicant then argues features that are not claimed:

There is no suggestion that deletion of an item "on hold" is a "tracked" event...There is no suggestion of doing anything in response to having items "on hold" other than the explicitly described prompt to the caller...much less...

Blinn, a customer indicates his past interest in an at least one secondary product by virtue of being a member in a frequent shopper program, or part of an incentive program, for example, as in Blinn, Col. 1, lines 43-56.

First, neither Blinn nor Bernard, whether taken alone or in combination, teaches or suggests [new limitation]...dynamically determining a package on an ad hoc basis...

Second, claims 123, 124, 125 and 126 each includes the [new limitation] feature of wherein the at least one secondary product was selected based on a ***past interest*** of the customer. Neither Blinn nor Bernard, whether taken alone or in combination, teaches or suggests such a feature. Accordingly, these claims are patentably distinct over the cited art for at least this reason.

In response, please see new grounds of rejection for new limitations.

On pages 40-41, Applicant appears to argue that the Examiner has not presented a prima facie case of obviousness:

Applicants again submit that there is no hint in either of Blinn or Bernard that either reference teaches the limitations of independent claims 119, 123, 124, 125, and 126. Accordingly, to the extent that only Blinn and Bernard are relied upon as teaching all the features of claims 119, 123, 124, 125, and 126, Applicants respectfully assert that the Section 103(a) rejection cannot stand. No evidence of all such features has been provided, much less substantial evidence. Accordingly, the Examiner has failed to establish a prima facie case of obviousness, as neither Blinn nor Bernard, alone or in combination, cannot support such a rejection. The Section 103(a) rejection fails for at least this reason.

Sixth, no substantial evidence of record has been provided that one skilled in the art would be motivated to combine the electronic shopping and merchandising system of Blinn with the automated product purchasing telephone system of Bernard in the manner suggested by the Examiner, to provide specifically for the feature of in response to detecting the loss of interest in the primary product, dynamically determining a package on an ad hoc basis to be offered to the customer, the package comprising the primary product and at least one secondary product, the primary product and the at least one secondary product each having a corresponding retail price. Thus, no substantial evidence of record has been provided of an apparent reason to combine or modify the references in any manner that renders any of claims 119, 123, 124, 125 and 126 obvious. Accordingly, a ***prima facie*** case of obviousness has not been established.

In fact, even if the references were combined in the manner suggested, the proposed combination would fail to teach in response to detecting the loss of interest in the primary product, determining a package to be offered to the customer, the package comprising the primary product and at least one secondary product, the primary product and the at least one secondary product each having a corresponding retail price. Nothing in any reference of record even hints at such operation. In fact, the Examiner has failed to show that any reference of record determines a package in response to determining the

loss of interest in the primary product. As such, any combination of the references of record fails to teach this limitation.

In response, the Examiner has established a prima facie case of obviousness.

The Examiner has (a) determined the scope and contents of the prior art; (b) ascertained the differences between the prior art and the claims in issue; (c) determine the level of ordinary skill in the pertinent art; and (d) evaluate any evidence of secondary considerations. As per KSR, the Examiner noted that the incorporation of the missing features is no more than the predictable use of prior art elements according to their established function, for example. The rejection is maintained.

Further in response to Applicant's arguments that the references provide no description or hint for certain limitations, the Examiner respectfully submits that he cites particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within individual claims, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the references refer to on-line commerce and e-shopping and tracking customer purchases and offering secondary products.

As best understood by the Examiner, the independent claims are directed to combinations of

- (a) ...central server...
- (b) ...dynamically...determine a package on an ad hoc basis
- (c) ...product selected based on [an indication of] **past interest**
- (d) ...secondary product does not have a pre-established relationship with primary product

##	cl	type	(a) Central server	(b) ...dynamically ...ad hoc basis	(c) ...past interest...	(d) ...does not have pre-established relationship...
1	1	Method	Y	Y	Y	Y
2	2	Medium		Y	Y	Y
3	13	Medium		Y	Y	Y
4	15	Medium		Y	Y	Y
5	17	Medium		Y	Y	Y
6	19	Medium		Y	Y	Y
7	22	Medium		Y	Y	Y
8	28	Medium		Y	Y	Y
9	30	medium		Y	Y	Y
10	33	Medium		Y	Y	Y
11	35	medium		Y	Y	Y
12	47	Method			Y	Y
13	48	Medium			Y	Y
14	74	System		Y	Y	Y
15	108	System	Y		Y	Y
16	119	Method	Y	Y		
17	123	apparatus		Y	Y	
18	124	Medium		Y	Y	
19	125	Method			Y	
20	126	system		Y	Y	

As to (a), central server, see Blinn, Fig. 1, ref. 102.

As to (b) ...dynamically determining a package on an ad hoc basis... Actions in a computer system are dynamic. Further, Applicant appears to define ad hoc basis as being contrary to predetermined packages in Blinn.

Blinn is devoid of any such feature, as it does not suggest or teach to dynamically determine a package on an **ad hoc** basis (because all of the packages in **Blinn** are predetermined).

Respectfully, there is no mention of ...packages...predetermined... in Blinn. Blinn discloses that a product has no related products. See, for example, at least Fig. 13B and related text, "...GLOVE **that has no related products...**"

As to (c) ...product selected...past interest... applicant argues, pages 35-36,

... Blinn is limited to offering to a customer a cross-sell product, that is associated in a database with the product selected for purchase by the customer. For example, in an implementation, if the customer selects a hat, then the cross-sell product is a scarf (see Blinn, col. 21, line 62 to col. 22, line 45 and Fig. 13B). Only cross-sell products that a merchant had previously associated in a database with the product selected for purchase by the customer are offered to the customer in Blinn. This occurs regardless of whether the customer had indicated any **past interest** (or any interest at all) in the cross-sell product. This is because Blinn discloses a strictly database-driven system, and it does not describe tracking of a customer's interests, much less tracking selections of products for the purpose of later including the product in a package being offered to the customer.

In stark contrast, pending independent claims 1, 2, 15, 19, 22, 28, 30, 47, 48, 74, and 108 have been amended herein to recite that at least one secondary product is selected for inclusion in the package based on **past interest** by the customer in at least one secondary product. Since such a feature is not taught by **Blinn**, thus these claims are not anticipated for at least this reason.

Blinn is consistent with applicant's disclosures, which also show secondary products in association with products selected for purchase by a customer. See applicant's Figs. 2B-2E, for example. In Blinn, a ***customer indicates his past interest*** in an at least one secondary product by virtue of being a member in a frequent shopper program, or part of an incentive program, for example, as in Blinn, Col. 1, lines 43-56.

As to (d) *... secondary product does not have a pre-established relationship with primary product...*

Blinn is devoid of any such feature, as it does not suggest or teach to dynamically determine a package on an **ad hoc** basis (because all of the packages in **Blinn** are predetermined).

Respectfully, there is no mention of ...packages...predetermined...in Blinn.

Packages are not predetermined in Blinn. See, for example, at least Fig. 13B and related text, which specifically refers to a "...GLOVE **that has no related products...**"

Priority

The Examiner again respectfully notes that inventor Fincham does not appear in other parent applications. Materials invented by Fincham are granted a priority date of 23 July 1999. See correction of inventorship (MPEP § 201.03 or § 1481).

Materials introduced in the instant application are granted a priority of 23 July 1999. For example, profit margins (claims 12, 13, 20, 23, 61, 82, 86) are not mentioned in any of the applications upon which applicant relies for priority.

Claim Rejections - 35 USC § 112 – first paragraph

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7, 12-43, 47-59, 61-72, 74-79, 82-104, and 108-126 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1-7, 12-43, 47-59, 61-72, 74-79, 82-104, and 108-126 are also

rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims include limitation ...dynamically determining a package on an ad hoc basis...wherein at least one secondary product does not have a pre-established relationship with the primary product... The specifications do not describe the combination as a single embodiment, as all products are related via the database.

For purposes of Examination, prior art is interpreted to meet the limitation where prior art discloses that a secondary product is not currently selected for purchase.

Claim Rejections - 35 USC § 112 – second paragraph

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7, 12-43, 47-59, 61-72, 74-79, 82-104, and 108-126 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant amended the term "...server..." to "...central server..." and it is not clear whether applicant thereby claims patentable distinction. Prior art is interpreted as disclosing the limitation where prior art discloses a server linked to the Internet.

The claims refer to "...wherein at least one secondary product does not have a pre-established relationship with the primary product..." which renders the claims

indefinite. The specifications refer to pre-determined relationship/package. The negative limitation "...does not have a [pre-established relationship]..." adds to the confusion and it is not possible to determine the metes and bounds of the claims.

Applicant's latest comments add to the confusion, since products appear to be selected for inclusion in the package based on profit margin considerations. There is no mention of profit margin in the instant applicant and in any of the long chain of applications upon which applicant relies.

For purposes of examination, the limitation is given its broadest reasonable interpretation to include a product that has no related product.

While the specifications contain the term "ad hoc..." applicant provides no definition and it is not possible to determine the metes and bounds of the claims. Synonyms for ad hoc include unplanned, informal, impromptu, improvised, unprepared, makeshift. (MS Word Thesaurus).

The claims include limitation ...dynamically determining a package on an ad hoc basis...wherein at least one secondary product does not have a pre-established relationship with the primary product... The specifications do not describe the combination as a single embodiment, as all products are related via the database.

For example, with emphasis added:

FIG. 2A demonstrates a product table **122A** that may be used by the central server 102 to assemble packages **AD HOC BASED on other products in which the customer has expressed an interest**. As shown, the exemplary product table **122A** includes a product identifier 202, a cost 204, a retail price 206 and a minimum price 208 for each product. The exemplary product table **122A** stores data records 210A-217A pertaining to various products. These products, identified by product identifiers 202A-H, may represent all or a portion of the products available in inventory, or may represent a **DYNAMIC** list of products in which the customer has expressed an interest during the current session or over past sessions. As used herein, the term "session" is meant to refer to interaction by a customer with the central server 102 by way of a customer device 106A, 106B or 106C

either on-line or in a physical *retailer*. In an exemplary embodiment, a session database 126 (as shown in FIG. 1A) may be maintained to **DYNAMIC**ally track products in which the customer has expressed an interest (see FIG. 3).

...a component of program 116 (FIG. 1A). The program 116 of the central server 102 may be configured to assemble packages on an **AD HOC basis** or may be configured to access pre-assembled packages stored in the product database 122. Exemplary methods for assembling packages will be discussed in greater detail below With reference to FIG. 8.

At step 804A, at least one secondary product is selected for inclusion in the package. Preferably, the secondary product(s) are selected **BASED** on a prior expression of interest by the customer. The product database 122 may **store only those products that were previously of interest to the customer**. Alternately, a session database 126 (see FIG. 1A) may store such information and selection of the secondary products may be performed **BASED** on cross-reference to the session database for a determination of secondary products in which the customer has expressed an interest. In another embodiment, selection of the secondary products may be **BASED** on **cross-reference** to a product database such as illustrated by product table 122E (FIG. 2E) which may store *pre-determined* or **DYNAMIC**ally determined associations between the primary product and one or more secondary products. For example, with specific reference to FIG. 2E, the product database 122E specifies that if a product having product identifier "P 198" is determined to be the primary product, the products 25 having product identifiers "P104" and "P119" are to be selected as the secondary products and the three products presented to the customer for a package price of "\$300.00", as depicted in record 210E. As a specific illustration, if a red scarf is determined to be the primary product of interest to the customer, an entry in the product table 122E may specify that the secondary products to be selected for the package are a matching pair of red gloves and a red hat. Other methods for selection of secondary products will occur to those of ordinary skill in the art.

FIG. 8B demonstrates an exemplary method 800B for assembling a package offer through use of a product database 122, such as exemplary product database 122B of FIG. 2B. The exemplary method 800B begins at starting block 801B, where a primary product has been determined to be of interest to a customer. At step 802B, the product identifier for the primary product is determined. Then, at step 803B, the database record associated with the product identifier of the primary product is accessed. The database record associated with the product identifier of the primary product stores a list of associated secondary products. At step 804B, the list of secondary products associated with the primary product is retrieved from the database record. At step 805B a plurality of "pick X" package prices are determined, corresponding to the package price if the customer selects "X" number of the associated secondary products from the list. For example, a "pick one" package price corresponds to the package price if the customer selects one secondary product to be included in a package along with the primary product. Likewise, a "pick two" package price corresponds to the package price if the customer selects two of the associated secondary products from the list. Any number of "pick X" package prices may be determined, limited only by the number of associated secondary products in the list. Those skilled in the art should recognize, however, the *pre-determined* list of associated secondary products is not required. The list of associated secondary products may alternately be created **AD HOC** and may include any number of secondary products.

Determination of the "pick X" package prices may be performed **AD HOC**, or may be performed by retrieving predetermined "pick X" package prices from the database record associated with the product identifier of the primary product. At step 806B multiple secondary products from the list of associated secondary products are presented to the customer along with instructions that the customer is permitted to select up to "X" number of the secondary products for inclusion in a package offered at the corresponding "pick X" package price. The exemplary method 800B then ends at step 807B.

For purposes of Examination, prior art is interpreted to meet the limitation where prior art discloses that a secondary product is not currently selected for purchase.

Claim Rejections- 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7, 12-43, 47-59, 61-72, 74-79, 82-104, and 108-126, as interpreted, are rejected under 35 U.S.C. 103(a) as being unpatentable over Blinn, US 5897622.

As per claim 1, Blinn discloses method(s) for determination and presentation of a package offer comprising the steps of:

detecting, by a central server, (Blinn, Fig. 1, ref. 102)

that a primary product is of interest to a customer, (Blinn detects a customer's request for information concerning a primary item, as in Col. 16, lines 6-37 and by detecting that a customer has placed a primary item in a shopping basket, as in Col. 17, lines 42-63, for example, thereby detecting a customer's interest)

the primary product having an associated primary product identifier (Blinn discloses the use of product identifiers, as in product numbers, Col. 2, lines 11-41. For Fig. 13B, see SKU for hat, the primary product of interest);

in response to detecting that the primary product is of interest to the customer, the central server dynamically determining a package to be offered to the customer, the package comprising the primary product and at least one secondary product, the primary product and the at least one secondary product each having a corresponding retail price (See, for example, Col. 1, lines 43-56, which discloses that in response to detecting that a primary product, shoes, is of interest to the customer, a package, shoes and socks, is determined and offered to a customer; shoes has a corresponding retail price, and socks has a corresponding retail price.)

wherein at least one of the at least one secondary product is a product not currently selected for purchase by the customer, (pair of shoes, Col. 1, lines 43-56), and

further wherein at least one of the at least one secondary product is selected for inclusion in the package based on an indication of past interest, by the customer, in at least one secondary product (**customer indicates his past interest** in an at least one secondary product by virtue of being a member in a frequent shopper program, or part of an incentive program, e.g., Blinn, Col. 1, lines 43-56);

further wherein at least one secondary product does not have a pre-established relationship with the primary product (Blinn, at least Fig. 13B and related text, which specifically refers to a "...GLOVE that has no related products..."

in response to determining the package, the central server determining a package price (e.g., Col. 1, lines 43-56, package price = price of shoes + (price of socks * .50))

which is less than a sum of the corresponding retail prices of the primary product and the at least one secondary product (retail price = price of shoes + price of socks)

presenting, by the central server, a package offer for sale of the package at the package price to the customer (e.g., Fig. 11 and related text, which shows presenting an adjusted price, as part of an HTML page. Col. 17, lines 1-17).

As per claim 1, Blinn **does not** use the term "...on an ad hoc basis..." Blinn discloses dynamically determining and generating lists of items and adjusting item prices to include promotions. See, for example, at least Fig. 10 and related text. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Blinn to disclose the central server dynamically determining a package on an ad hoc basis to be offered to the customer because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

Independent Claim 2 is rejected on the same grounds as claim 1.

As per claim 3, Blinn does not specifically disclose detecting that information relating to the primary product is displayed on a web-page viewed by the customer for a pre-determined amount of time.

As previously officially noticed, and now admitted prior art, it is old and well known to measure duration of time spent by a customer viewing information displayed on a web page.

It would have been obvious to one of ordinary skill at the time the invention was made to combine Blinn and general knowledge to disclose detecting that information

relating to the primary product is displayed on a web-page viewed by the customer for a pre-determined amount of time because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 4, Blinn discloses that detecting that the primary product is of interest to the customer comprises detecting an input signal generated by the customer in response to information displayed on a web-page relating to the primary product. A customer requests information concerning an item of interest, GLOVE, the primary product. See references to keyword search, as in Col. 8, lines 17-34. The search produces information concerning the desired primary product GLOVE, which is then displayed on a web-page at the client computer. See Fig. 2, item 122, customer browser. In response to this display of information, the customer at the client machine further manifests his interest in a primary product (GLOVE) by using his keyboard or other input device at the client machine, generating an input signal that is detected by the client machine and is transmitted to Merchant System 120, Fig. 2. Merchant System detects the input signal that manifests the customer's interest in primary product GLOVE.

As per claim 5, Blinn discloses that detecting that the primary product is of interest to the customer comprises detecting that the customer has added the primary product to a virtual shopping cart. Col. 8, lines 1-16, Col. 17, lines 18-63, Col. 21, lines 17-34.

As per claim 6, Blinn discloses that detecting that the primary product is of interest to the customer comprises: detecting at least one keyword input by the

customer into an input field on a web-page (as in Col. 7, lines 42-53, Col. 8, lines 17-34) and determining that the at least one keyword relates to the primary product ("GLOVE").

As per claim 7, Blinn discloses that detecting that the primary product is of interest to the customer comprises receiving a customer request for a customer requested package associated with the primary product. See, for example, at least Col. 1, lines 43-56, which discloses a package (primary product shoes and secondary product socks at a package price, Col. 8, lines 1-16, package price = price of shoes + (price of socks * .50). See Col. 8, lines 1-16, which shows that a customer orders the items in the shopping basket, thereby requesting the package of shoes and socks associated with the primary product shoes).

Claims 8-11 were cancelled.

As per claim 12, Blinn does not mention profit margins.

As previously officially noticed and now admitted prior art, merchants price package offers according to multiple factors, including profit margins of products (first ... nth) included in a package.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn with knowledge of one of ordinary skill in the art at the time the invention to disclose that determining the package to be offered to the customer comprises accessing a database to select the at least one secondary product from a plurality of available secondary products based on at least one of the profit margin of the primary product and the profit margin of the at least one secondary

product because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

Independent Claim 13 is rejected on the same grounds as claim 1.

As per claim 14, Blinn discloses storing, in a database, information relating to at least one additional product of interest to the customer (Fig. 2, database 121, Col. 12, line 57-Col. 13, line 23); and that determining the package to be offered to the customer comprises:

accessing the database to determine the at least one additional product of interest to the customer (for example, Fig. 2, item 121, Col. 12, line 57-Col. 13, line 23);

selecting the at least one additional product of interest to the customer as the at least one secondary product (Col. 18, line 25-Col. 19, line 15; the additional product is of interest to the customer by the fact that the customer has selected it and placed it in the shopping basket, See Col. 8, lines 1-16).

Independent Claim 15 is rejected on the same grounds as claim 1.

Claim 16 is rejected below.

Independent claim 17 is rejected below.

As per claim 18, Blinn discloses that determining the package price comprises: determining a discounted price for each of the at least one secondary product; and summing the retail price of the primary product and the discounted price for the at least one secondary product to calculate the package price. See, for example, Col. 1, lines 43-56, which shows: package price = price of shoes + (price of socks * .50).

Independent Claim 19 is rejected on the same grounds as claim 1.

As per claim 20, Blinn does not mention profit margins; It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Blinn to disclose that a discounted price for each Of the at least one secondary product is based on a profit margin of the primary product because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 21, Blinn discloses that determining the package Price comprises: determining a discounted price for the each of the primary product and the at least one secondary product (see, for example, references to price adjustment stage, as in Col. 16, lines 27-367); and

summing the discounted prices of the primary product and the at least one secondary product to calculate the package price. See, for example, references to order price adjust stage, as in Col. 20, line 27 to Col. 21, line 5.

Independent Claim 22 is rejected on the same grounds as claim 21.

As per claim 23 Blinn does not mention profit margins; see claim 20 for admitted prior art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Blinn to disclose that the discounted price for each of the primary product and the at least one secondary products is based on a profit margin of the primary product and a profit margin of the at least one secondary product because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 24, Blinn does not specifically disclose that in response to presenting the package offer to the customer, receiving a customer response indicating a rejection of the package offer; and in response to the customer response, determining another package to be offered to the customer.

As previously officially noticed and now admitted prior art, it is common and well known to present alternate offers to a customer when a customer indicates rejection of a first offer.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Blinn to disclose that in response to presenting the package offer to the customer, receiving a customer response indicating a rejection of the package offer; and in response to the customer response, determining another package to be offered to the customer because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 25, Blinn discloses in response to presenting the package offer to the customer, receiving a customer response indicating an account identifier and an acceptance of the package offer; and in response to the customer response, charging a financial account identified by the account identifier for the amount of the package price. (Blinn, credit card payment information, Col. 8, lines 1-16, a customer indicates acceptance of the package offer, by providing payment information, confirming completion of a purchase transaction, as in Col. 8, lines 1-16.).

As per claim 26, Blinn discloses storing transaction data relating to sale of the package in a database. Blinn, Col. 6, line 47-Co1.7, line 3, Col. 23, lines 11-24.

As per claim 27, Blinn discloses that a first package offer for sale of a first package at a first package price is presented to the customer; and that a second package offer for sale of a second package at a second package price is presented to the customer. See, for example, Fig. 7 and related text, which shows a first package that has a glove and a hat, and see Fig. 13B and related text, which shows a second package, including a hat and a scarf. Each package has a combined price.

Independent Claim 28 is rejected on the same grounds as claim 1.

As per claim 29, Blinn discloses that the package comprises the primary product (SHOES) and a plurality of secondary products (1 pair, i.e., 2 SOCKS); and that the package offer comprises an offer for sale of a pre-determined number of the secondary products (2 SOCKS), selected by the customer, at the package price. Col. 1, lines 43-56.

Independent Claim 30 is rejected on the same grounds as claim 1.

As per claim 31, Blinn discloses that the package comprises the primary product (SHOES) and a plurality of secondary products (SOCKS); and that the package offer comprises an offer for sale of a customer-selected number of the secondary products (2 socks), selected by the customer, at the package price. Col. 11 lines 43-56.

As per claim 32, Blinn does not specifically disclose that the package price varies based on the customer-selected number of secondary products. As previously officially

noticed and now admitted prior art, it is old and well known to calculate a different price for a particular product based on the quantity of the product purchased.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Blinn to disclose that a package price varies based on a customer-selected number of secondary products because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

Independent Claim 33 is rejected on the same grounds as claim 32.

Claims 34-35 are rejected as unpatentable over Blinn and **GUPTA**. See below.

As per claim 36, Blinn discloses that detecting that the primary product is of interest to the customer comprises receiving the primary product identifier from a customer service device such as an interactive kiosk, Col. 5, line 49-Col. 6, line 25. Blinn does not specify what functions may be performed by the interactive kiosk.

As previously officially noticed and now admitted prior art, interactive kiosks, with I/O devices (keypad, scanner, card readers, sticks, displays, printers, speakers, for example), are notoriously well known and permit customers to interact with retailer systems to perform many functions that a customer performs from home.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn and knowledge concerning customer service devices such as kiosks to disclose detecting that the primary product is of interest to the customer comprises receiving the primary product identifier from a customer service device such as a kiosk at a retail establishment because the incorporation of such

features is no more than the predictable use of prior art elements according to their established functions.

As per claim 37, Blinn discloses interactive Kiosks, as above, which a customer may use perform, at a retailer's, many functions that a customer performs from home. Blinn discloses inputting (an input device such as a keypad, for example) the primary product identifier and a display device (an output device such as a screen) operable to present the package offer. See, for example, Col. 5, line 49-Col. 6, line 25.

As per claim 38, Blinn does not specifically disclose that the customer service device (interactive kiosk) further comprises a printer operable to print a printed version of the package offer. As noted above, kiosks have I/O devices, including printers. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn and notorious knowledge about kiosks to disclose that a customer service device such as Blinn's interactive kiosk, to comprise a printer operable to print a printed version of the package offer because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 39, Blinn does not specifically disclose that the printed version [of the package offer] comprises a code identifying the package offer and product identifiers for the primary product and the at least one secondary product included in the package. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Blinn to disclose that the printed version [of the package offer] comprises a code identifying the package offer and product identifiers for the

primary product and the at least one secondary product included in the package because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 40, Blinn does not specifically disclose that the input device at a customer service device such as a kiosk comprises a bar code reader.

As previously officially noticed and now admitted prior art, customer service devices such as kiosks often have an input device that comprises a bar code reader.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn and well known information to disclose that the input device at a customer service device such as a kiosk to comprise a bar code reader because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 41, Blinn discloses point of sale systems, as in Col. 2, lines 42-67, Col. 23, lines 25-50. Blinn discloses receiving [...] a customer response indicating an account identifier and an acceptance of the package offer; and in response to the customer response, authorizing [...] to charge a financial account identified by the account identifier for the amount of the package price. Blinn, Col. 8, lines 1-16, a customer indicates acceptance of the package offer, by providing payment information, confirming completion of a purchase transaction, as in Col. 8, lines 1-16.)

Blinn does not specifically disclose that receiving [...] a customer response indicating an account identifier and an acceptance of the package offer; and in response to the customer response, authorizing [...] to charge a financial account identified by the

account identifier for the amount of the package price takes place at a point of sale terminal.

As previously officially noticed an now admitted prior art, a Point of Sale system include point of sales terminals that are used to capture data at the time and place of sale; POS systems use personal computers or specialized terminals that are combined with cash registers, optical scanners for reading product tags and/or magnetic card readers for reading credit cards; POS systems may be online to a central computer for credit checking and inventory updating.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn and knowledge of POS systems to disclose receiving from a point of sale terminal a customer response indicating an account identifier and an acceptance of the package offer; and in response to the customer response, authorizing the point of sale terminal to charge a financial account identified by the account identifier for the amount of the package price because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 42, Blinn does not specifically disclose that the customer response further indicates a code identifying the package offer and product identifiers for the primary product and the at least one secondary product included in the package. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Blinn to accept a customer response that further indicates a code identifying the package offer and product identifiers for the primary product and the at

least one secondary product included in the package because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 43, Blinn discloses storing transaction data. Blinn, Col. 6, line 47-Col. 7, line 3, Col. 23, lines 11-24.

Claims 44-46 were cancelled.

Independent Claim 47 is rejected on the same grounds as claim 1.

Independent Claim 48 is rejected on the same grounds as claim 1.

Claim 49 [package price is less] is rejected on the same grounds as claim 18.

Claim 50 is rejected on the same grounds as claim 3.

Claim 51 is rejected on the same grounds as claim 4.

Claim 52 is rejected on the same grounds as claim 5.

Claim 53 is rejected on the same grounds as claim 6.

As per claim 54, Blinn discloses obtaining the primary product and the at least one secondary product from the retailer after providing the customer response indicating the acceptance of the package offer. Blinn, Col. 8, lines 1-16. See also references to shipping stage, as in Col. 20, line 27-Co1.21, line 5.

Claim 55-56 are rejected below.

As per claim 57, Blinn discloses that obtaining the primary product and the at least one, secondary products comprises receiving a shipment containing the primary product and the at least one secondary product. Blinn, Col. 8, lines 1-16. See also references to shipping stage, as in Col. 20, line 27-Col. 21, line 5.

As per claim 58, Blinn discloses that the primary product has an associated primary product identifier; that indicating an interest in the primary product comprises inputting the primary product identifier [...] that being presented with the package offer comprises receiving the package offer [...] that providing the customer response comprises presenting the account identifier, the primary product and the at least one secondary product, and the indication of the acceptance of the package offer [...], as in claim 47, above.

Blinn does not specifically disclose these limitations as occurring at specific physical locations. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn with knowledge of a notorious nature concerning customer service devices (e.g., kiosks) and Point of sale terminals to disclose that these customer actions take place at these particular types of devices because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 59, Blinn discloses that the customer service device communicates with a central server to determine the package offer. Blinn, Fig. 1, a client device transmits the input signal to the central server. See references to products of interest, as in Col. 1, lines 25-56. Blinn discloses cross-selling, Col. 1, lines 43-56). on the display device. Blinn, Fig. 11 and related text, show presenting a package that has been determined, Col. 17, lines 1-17.

Claim 60 was cancelled.

Claim 61 is rejected on the same grounds as claim 13.

As per claim 62, Blinn discloses that the central server communicates with a database to assemble the package offer; that the database stores information relating to at least one additional product in which the customer has indicated an interest; and that the at least one secondary product is selected based on the at least one additional products. Blinn, Col. 1, lines 43-46.

As per claim 63, Blinn discloses that the central server communicates with a database to assemble the package offer; that the database stores information relating to at least one previous transaction (membership and frequent shoppers, the previous transaction including a previously sold product as in Col. 1, lines 43-56. Blinn discloses that the at least one secondary product is selected based on a relationship with the previously sold product. Blinn, Col. 1, lines 43-46, Fig. 11 and related text, and references to relationship between primary and secondary products in that they are related via cross-sell table, for example. Blinn does not specifically disclose that to determine the package offer, the at least one secondary product is selected from available secondary products based on a profit margin of the primary product.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Blinn to disclose that to determine the package offer, the at least one secondary product is selected from available secondary products based on a profit margin of the primary product because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

Claim 64 is rejected on the same grounds as claim 37.

Claim 65 is rejected on the same grounds as claim 38.

Claim 66 is rejected on the same grounds as claim 40.

As per claim 67, Blinn discloses point of sale systems, Col. 2, lines 42-67, Col. 23, lines 25-50. Blinn discloses that client machines communicate with central servers to determine package prices (see rejection of claims 1, 47 and 74) and that they communicate with financial institutions to charge a package to a financial account (Blinn, credit card payment information, Col. 8, lines 1-16, a customer indicates acceptance of the package offer, by providing payment information, confirming completion of a purchase transaction, as in Col. 8, lines 1-16.). Blinn does not provide specific examples to show that the point of sale terminal communicates with a central server to determine the package price; and that the point of sale terminal communicates with a financial institution to charge the package price to the financial account. These functions are found in point of sale systems and terminals. See point of sale, claim 41.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn and knowledge concerning functions of point of sale system terminals to disclose show that the point of sale terminal communicates with a central server to determine the package price; and that the point of sale terminal communicates with a financial institution to charge the package price to the financial account because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 68, Blinn discloses that indicating the interest in the primary product comprises requesting a package associated with the primary product. Blinn shows that a customer has selected to purchase a pair of shoes, Col. 1, lines 43-56.

Claims 69-71 are rejected below.

Claim 72, is rejected on the same grounds as claim 57.

Claim 73 was cancelled.

Independent Claim 74 is rejected on the same grounds as claim 1.

Claim 75 is rejected on the same grounds as claim 3.

Claim 76 is rejected on the same grounds as claim 4.

Claim 77 is rejected on the same grounds as claim 5.

Claim 78 is rejected on the same grounds as claim 6.

Claim 79 is rejected on the same grounds as claim 7.

Claims 80-81 were cancelled.

Claim 82 is rejected on the same grounds as claim 12.

Claim 83 is rejected on the same grounds as claim 14.

Claim 84 is rejected on the same grounds as claim 16.

Claim 85 is rejected on the same grounds as claim 18.

Claim 86 is rejected on the same grounds as claim 20.

Claim 87 is rejected on the same grounds as claim 21.

Claim 88 is rejected on the same grounds as claim 23.

Claim 89 is rejected on the same grounds as claim 24.

Claim 90 is rejected on the same grounds as claim 25.

Claim 91 is rejected on the same grounds as claim 26.

Claim 92 is rejected on the same grounds as claim 27.

Claim 93 is rejected on the same grounds as claim 29.

Claim 94 is rejected on the same grounds as claim 31.

Claim 95 is rejected on the same grounds as claim 32.

Claim 96 is rejected on the same grounds as claim 34.

Claim 97 is rejected on the same grounds as claim 36.

Claim 98 is rejected on the same grounds as claim 37.

Claim 99 is rejected on the same grounds as claim 38.

Claim 100 is rejected on the same grounds as claim 39.

Claim 101 is rejected on the same grounds as claim 40.

Claim 102 is rejected on the same grounds as claim 41.

Claim 103 is rejected on the same grounds as claim 42.

Claim 104 is rejected on the same grounds as claim 43.

Claims 105-107 were cancelled.

Independent Claim 108 is rejected on the same grounds as claim 1.

Claim 109 is rejected on the same grounds as claim 1.

Claim 110 [price is less] is rejected on the same grounds as claim 18.

Claim 111 is rejected on the same grounds as claim 4.

Claim 112 is rejected on the same grounds as claim 5.

Claim 113 is rejected on the same grounds as claim 6.

Claim 114 is rejected below.

As per claim 115, Blinn discloses that the input device is further operable to generate a request for shipment of the primary product and the at least one secondary product in response to sending the customer response. Col. 8, lines 1-16. see references to shipping stage, as in Col. 20, line 27-Col. 21, line 5.

Claim 116 is rejected on the same grounds as claim 39.

As per claim 117, Blinn discloses that the input signal indicating an interest in the primary product comprises a request for a package associated with the primary product. See, for example, at least Col. 1, lines 43-56, which discloses a package (primary product shoes and secondary product socks at a package price, Col. 8, lines 1-16, package price = price of shoes + (price of socks * .50). See Col. 8, lines 1-16, which shows that a customer orders the items in the shopping basket, thereby requesting the package of shoes and socks associated with the primary product shoes).

Claim 118 is rejected below.

Claims 119-126 are rejected below.

Claims 16-17, 34-35 are rejected under 35 U.S.C. 103(a) as unpatentable over Blinn, above, in view of GUPTA (US 6820062).

As per claim 16, Blinn discloses storing in a database information relating to a previous transaction of the customer, the previous transaction including at least one previously sold product (Blinn, Col. 21, lines 6-34, which shows saving orders, which includes primary and secondary products). Blinn does not specifically disclose that determining the package to be offered to the customer comprises: accessing the

database to determine the at least one previously sold product, and accessing the database to select the at least one secondary product from a plurality of available secondary products, the selected at least one secondary product having a predetermined relationship with the at least previously sold product. **GUPTA** discloses tailoring packages according to shopper's buying patterns. Col. 5, lines 34-48.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn and **GUPTA** to disclose that determining the package to be offered to a customer comprises: accessing a database to determine the at least one previously sold product, and accessing the database to select the at least one secondary product from a plurality of available secondary products, the selected at least one secondary product having a predetermined relationship with the at least previously sold product because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

Independent Claim 17 is rejected on the same grounds as claim 16.

As per claim 34, Blinn does not specifically disclose that a package comprises the primary product and a plurality of lists of secondary products; and that the package offer comprises an offer for sale of a pre-determined number of the secondary products selected by the customer from each of the plurality of lists, at the package price. This is disclosed by **GUPTA** (US 6820062) Col. 9, lines 32-50, for example. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn and **GUPTA** to disclose that a package comprises the primary product and a plurality of lists of secondary products; and that the package offer

comprises an offer for sale of a pre-determined number of the secondary products selected by the customer from each of the plurality of lists, at the package price because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

Independent Claim 35 is rejected on the same grounds as claim 34.

Claims 55-56, 69-72, 114, 118, are rejected under 35 U.S.C. 103(a) as being as unpatentable over Blinn, above, in view of Tice.

As per claim 55, Blinn does not specifically disclose that obtaining the primary product and the at least one secondary product from the retailer comprises visiting a retail establishment of the retailer to pick up the primary product and the at least one secondary product. **TICE** discloses that it was old and well known to allow customer to pick up items purchased via a web site by visiting retail establishments at the time of Applicants' invention.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn and **TICE** to disclose that obtaining the primary product and the at least one secondary product from the retailer comprises visiting a retail establishment of the retailer to pick up the primary product and the at least one secondary product because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 56, Blinn does not specifically disclose receiving a code from the retailer; and upon visiting the retail establishment, presenting the code to the retailer,

whereby the retailer may use the code to verify that the financial account has been charged in the amount of the package price. This is disclosed by **TICE**.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn and **TICE** to disclose receiving a code from the retailer; and upon visiting the retail establishment, presenting the code to the retailer, whereby the retailer may use the code to verify that the financial account has been charged in the amount of the package price because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

Claim 69 is rejected on the same grounds as claim 55.

Claim 70, [plurality of retailers] is rejected on the same grounds as claim 55.

Claim 71, [plurality of retailers] is rejected on the same grounds as claim 56.

Claim 114 is rejected on the same grounds as claim 56.

Claim 118, is rejected on the same grounds as claim 55.

Claims 119-126 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blinn, above, in view of BERNARD (US 5918213).

As per independent claim 119, Blinn discloses method for determination and presentation of a package offer comprising the steps of:

detecting that a primary product is of interest to a customer (Blinn detects a customer's interest based on a customer's request for information concerning a primary item. Col. 16, lines 6-37.)

the primary product having an associated primary product identifier (Blinn discloses the use of product identifiers, as in product numbers, Col. 2, lines 11-41. For Fig. 13B, see SKU for hat, the primary product of interest);

determining a package to be offered to the customer, the package comprising the primary product and at least one secondary product, the primary product and the at least one secondary product each having a corresponding retail price. See, for example, Col. 1, lines 43-56, which discloses that in response to detecting that a primary product (such as shoes) is of interest to the customer, a package is determined and offered to a customer, a package comprising shoes and a pair of socks. The primary product has a corresponding retail price, and the secondary product, socks, also has a corresponding retail price.)

in response to determining the package, determining a package price which is less than a sum of the corresponding retail prices of the primary product and the at

least one secondary product (see, for example, Blinn, Col. 1, lines 43-56, which shows: $\text{package price} = \text{price of shoes} + (\text{price of socks} * .50)$; which is less than the sum of corresponding retail prices of the products: $\text{retail price} = \text{price_of shoes} + \text{price of socks}$; presenting a package offer for sale of the package at the package price to the customer. See, for example Blinn, Fig. 11 and related text, which shows presenting an adjusted price, as part of an HTML page. Col. 17, lines 1-17).

Blinn does not specifically disclose detecting a loss of interest in the primary product by the customer and that determining a package to be offered to a customer occurs in response to detecting the loss of interest in the primary product.

Bernard discloses tracking events such as when a customer removes items from a shopping cart, thereby detecting a loss of interest in a primary product by customers. See, for example, **BERNARD**, Col. 33, lines 4-63. **BERNARD** discloses permitting a customer to review items and offers coupons and promotions to customers for all items. In **BERNARD**, see at least Col. 5, line 26-Co1.6, line 49.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn and **BERNARD** to disclose detecting a loss of interest in the primary product by the customer and that determining a package to be offered to a customer occurs in response to detecting the loss of interest in the primary product because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 120, Blinn does not specifically disclose that detecting a loss of interest in the primary product comprises detecting that the customer has removed the primary product from a virtual shopping basket associated with the customer. **BERNARD**, Col. 5, line 58-Col. 6, line 10, discloses detecting that a customer has removed items that he no longer wishes to purchase, thereby detecting a loss of interest in a primary product because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

As per claim 121, Blinn discloses that detecting a loss of interest in a primary product comprises determining that the customer has expressed interest in another product without having placed the primary product in a virtual shopping basket. Blinn

detects a customer's interest based on a customer's request for information concerning a primary item, as in Col. 16, lines 6-37.

As per claim 122 Blinn does not specifically disclose that detecting a loss of interest in the primary product comprises determining that the primary product has been in a virtual shopping basket associated with the customer for a predetermined amount of time without having been purchased. **BERNARD** discloses detecting that customers browse through selections without making purchases, as in **BERNARD**, Col. 32, lines 56- Col. 33, line 16.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn and **BERNARD** to disclose determining that the primary product has been in a virtual shopping basket associated with the customer for a predetermined amount of time without having been purchased, thereby detecting a loss of interest in the primary product because the incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

Independent Claim 123 is rejected on the same grounds as claim 119.

Independent Claim 124 is rejected on the same grounds as claim 119.

As per independent claim 125, Blinn discloses methods for assembly, presentation and redemption of a package offer comprising the steps of

indicating an interest in a primary product (Blinn, see Col. 1, lines 43-56, where a customer indicates an interest in a pair of shoes);

being presented with a package offer to purchase a package at a package price, the package comprising the primary product and at least one secondary product (see references to socks, Col. 1, lines 43-56. See also Fig. 11, and related text);

providing a customer response comprising an account identifier and an indication of an acceptance of the package offer, the acceptance of the package offer authorizing a charge to a financial account identified by the account identifier for the amount of the package offer price (credit card payment information, Blinn, Col. 8, lines 1-16, a customer indicates acceptance of the package offer, by providing payment information, confirming completion of a purchase transaction, as in Col. 8, lines 1-16.)

Blinn does not specifically disclose indicating a loss of interest in the primary product and that being presented with a package offer occurs in response to detecting the loss of interest in the primary product.

Bernard discloses tracking events such as when a customer removes items from a shopping cart, thereby detecting a loss of interest in a primary product by customers. See, for example, **BERNARD**, Col. 33, lines 4-63. **BERNARD** discloses permitting a customer to review items and offers coupons and promotions to customers for all items. In **BERNARD**, see at least Col. 5, line 26-Col. 6, line 49.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Blinn and **BERNARD** to disclose indicating a loss of interest in the primary product and that being presented with a package offer occurs in response to detecting the loss of interest in the primary product because the

incorporation of such features is no more than the predictable use of prior art elements according to their established functions.

Independent Claim 126 is rejected on the same grounds as claim 125.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES ZURITA whose telephone number is (571)272-6766. The examiner can normally be reached on 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571)272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James Zurita/
Primary Examiner
Art Unit 3625
26 April 2009